

04-28539

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:
Case Number BKY 04-60352-DDO

John Copp
Deborah Copp,

Debtor(s)

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Washington Mutual Bank, FA, successor in interest to HomeSide Lending, Inc., fka BancBoston Mortgage Corporation moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 1:00 p.m., on November 16, 2004, in Courtroom No. 2, at the United States Courthouse, at 118 South Mill Street, Fergus Falls, Minnesota.

3. Any response to this motion must be filed and delivered not later than November 10, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than November 4, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on March 26, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On June 22, 1995, John W. Copp and Deborah L. Copp, husband and wife made, executed and delivered to First American Bank, National Association their Note (hereinafter referred to as the "Note"), in the original principal amount of \$98,800.00 bearing interest from

the date thereof at the rate of 8.375% per annum until paid, payable in monthly installments of \$750.95 commencing on August 1, 1995 and on the first day of each and every calendar month thereafter until the principal and interest were fully paid. A copy of the Note is attached hereto as Exhibit "A" and made a part thereof by reference.

7. On June 22, 1995, to secure the payment of the Note, John W. Copp and Deborah L. Copp, husband and wife, executed and delivered to First American Bank, National Association their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Marshall County, Minnesota, legally described as follows:

That part of the South Half of the Southeast Quarter (S 1/2 SE 1/4) of Section Thirty-four (34) in Township One Hundred Fifty-five (155) North of Range Forty-eight (48) West, Marshall County, Minnesota described as follows: Commencing at the Southwest Corner of said SE 1/4 of Section 34, Township 155 North, Range 48 West; thence East along the South Line of said SE 1/4 a distance of 1,020 Feet to the point of beginning of the tract to be conveyed herein; thence continuing East along said South Line of said SE 1/4 a distance of 500 feet; thence North Parallel with the West Line of said SE 1/4 a distance of 500 feet; thence West Parallel with the South Line of said SE 1/4 a distance of 500 feet; thence South Parallel with the West Line of said SE 1/4 a distance of 500 Feet, more or less to the Point of beginning.

which property has an address of: ROUTE 1 BOX 2, Warren, MN 56762. The mortgage was filed for record in the office of the Recorder, County of Marshall, on July 10, 1995, as Document No. 266510, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage assignments are attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtors have filed a plan dated April 8, 2004, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the July, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

3 payments @ \$935.79	\$2,807.37
Accrued Late Charges	\$150.20
Attorneys Fees & Costs	\$800.00
TOTAL POST - PETITION	<hr/> \$3,757.57

Through Debtors' failure to make current post-petition payments, amount due and owing include the following:

Principal Balance	\$88,896.60
Interest	\$2,467.19
Accumulated late fees	\$150.20
Attorneys Fees & Costs	\$950.00
TOTAL	<u>\$92,463.99</u>

11. Debtors have represented the value of this property to be \$115,300.00 on the schedules which accompanied their petition. They therefore, have no equity in this property by their own admission.

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Washington Mutual Bank, FA, Successor in Interest to HomeSide Lending, Inc., fka BancBoston Mortgage Corporation moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.
2. For such other and further relief as the Court finds just and proper.

Dated: 10.15.04

Signed: /s/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeycr-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439 2306
(952) 831-4060

VERIFICATION

I, Cindy Hystad, the Asst. Secretary for Washington Mutual Bank, FA, Successor In Interest To Homeside Lending, Inc., Fka Bancboston Mortgage Corporation, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: _____

W. H. H.

Signed: _____

[Signature]

Washington Mutual Bank, FA
8120 Nations Way Bldg 100
Jacksonville, FL 32256

NOTELOAN NO. 4780472 *M*

June 22, 1995

Warren
MNMinnesota
(State)RR 1, Box 2, Warren, MN 56762
(Property Address)**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$46,800.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is First American Bank, National Association.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 8.1750%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the 1st day of each month beginning on August 1, 1995. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on July 1, 2025, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date."

I will make my monthly payments at 202 W. Johnson Ave. P.O. Box 85
Warren, MN 56762
or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$750.95.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.0000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

266510

MORTGAGE RECORD

BOOK 252 PAGE 728

AFTER RECORDING MAIL TO

First American Bank, National Association
202 W Johnson Ave PO Box 85
Warren, MN 56762

RECORDED ☒
INDEXED ☒
TRACTED ☒

LOAN NO. 4780472

[Space Above This Line For Recording Date]

STATE OF MINNESOTA } 4780472
COUNTY OF MARSHALL }

I hereby certify that the within instrument
was duly recorded for record on the 10th
day of July, A.D. 1995, at 10:00
o'clock A.M., and was duly recorded in Book
252 of Page 728-733
Maple, C. Helgeson
County Recorder
Warren, Minn.

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on June 22, 1995. The mortgagor is John W. Copp and Deborah L. Copp, husband and wife.

[Borrower] This Security Instrument is given to

First American Bank, National Association,
which is organized and existing under the laws of the United States of America,
and whose address is 202 W Johnson Ave PO Box 85, Warren, MN 56762 (Lender).

Borrower owes Lender the principal sum of Ninety Eight Thousand Eight Hundred Dollars and no/100 Dollars (U.S. \$98,800.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on July 1, 2025, and for interest at the yearly rate of eight and three eighths percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in Marshall County, Minnesota:

That part of the South Half of the Southeast Quarter (S 1/2 SE 1/4) of Section Thirty-four (34) in Township One Hundred Fifty-five (155) North of Range Forty-eight (48) West, Marshall County, Minnesota described as follows: Commencing at the southwest corner of said SE 1/4 of Section 34, Township 155 North, Range 48 West; thence East along the south line of said SE 1/4 a distance of 1,020 feet to the point of beginning of the tract to be conveyed herein; thence continuing East along said south line of said SE 1/4 a distance of 500 feet; thence North parallel with the west line of said SE 1/4 a distance of 500 feet; thence West parallel with the south line of said SE 1/4 a distance of 500 feet; thence South parallel with the west line of said SE 1/4 a distance of 500 feet, more or less, to the point of beginning.

which has the address of

RR 1, Box 2

Warren

[Street]

[City]

Minnesota

56762
[Zip Code]

("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

MINNESOTA-SINGLE FAMILY-FHMA/FHLMC UNIFORM INSTRUMENT

FHLM 3024 9/90

ISC/CMOTMN/0391/3024(9-90):L

PAGE 1 OF 6

266761

When Recorded Mail To:

First American Bank, National Association
202 W Johnson Ave PO Box 85
Warren, MN 56762

LOAN NO. 4780472

MORTGAGE RECORD

BOOK 253 PAGE 356

STATE OF MINNESOTA }
COUNTY OF MARSHALL } SS

I hereby certify that the within instrument
was filed in this office for record on the 16th
day of Aug. A.D. 1995, at 10:30
o'clock A.M. and was duly recorded in Book
253 of 111th Page 356

Deputy County Recorder
By Deputy County Recorder
Warren, MN

RECORDED
INDEXED
TRACTED

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CORPORATION ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to

BancBoston Mortgage Corporation

all the rights, title and interest of undersigned in and to that certain Real Estate Mortgage dated June 22, 1995
executed by John W. Copp and Deborah L. Copp, husband and wife

to First American Bank, National Association

and whose address is 202 W Johnson Ave PO Box 85, Warren, MN 56762

and recorded in Book/Volume No. 253 of 111th page(s) 732-733, as Document No. 266761
County Records, State of Minnesota on real estate legally described as
follows:

That part of the South Half of the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty-four (34) in Township One Hundred Fifty-five (155) North of Range Forty-eight (48) West, Marshall County, Minnesota, described as follows: Commencing at the southwest corner of said SE $\frac{1}{4}$ of Section 34, Township 155 North, Range 48 West; thence East along the south line of said SE $\frac{1}{4}$ a distance of 1,020 feet to the point of beginning of the tract to be conveyed herein; thence continuing East along said south line of said SE $\frac{1}{4}$ a distance of 500 feet; thence North parallel with the west line of said SE $\frac{1}{4}$ a distance of 500 feet; thence West parallel with the south line of said SE $\frac{1}{4}$ a distance of 500 feet; thence South parallel with the west line of said SE $\frac{1}{4}$ a distance of 500 feet, more or less, to the point of beginning.

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Real Estate Mortgage.

DATED: 06/22/95

FIRST AMERICAN BANK, N.A.

Richard LaCoursiere
Richard LaCoursiere, AEP

Witness

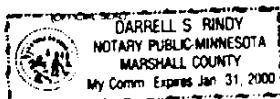
STATE OF MINNESOTA
COUNTY OF MARSHALL

On 06/22/95 before me, the undersigned, a Notary Public in and for the said County and State,
personally appeared Richard LaCoursiere

to me personally known, who, being duly sworn by me, did say that he/she is the

of the corporation named herein which executed the within instrument, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation pursuant to its by-laws or a resolution of its Board of Directors and that he/she acknowledges said instrument to be the free act and deed of said corporation

Darrell S. Rindy
Notary Public for the state of Minnesota
My commission expires: 1-1-2000



This document was drafted by
the First American Bank, N.A.
Warren, MN 56762

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-60352-DDO
Chapter 13

John Copp
Deborah Copp,

Debtor(s)

MEMORANDUM OF LAW

Washington Mutual Bank, FA, successor in interest to HomeSide Lending, Inc., fka BancBoston Mortgage Corporation ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$3,757.57.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 2 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$92,463.99. [The property is encumbered by a second mortgage in favor of NW Regional Development Commission in the approximate amount of \$25,300.00.] The fair market

value of the property is approximately \$115,300.00. Clearly, the Debtor(s) have no equity in the property.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 10-15-01.

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

Signed:/e/ NANCY A. NORDMEYER
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on October 15, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

John Copp
35228 State Hwy 1 NW
Warren, MN 56762

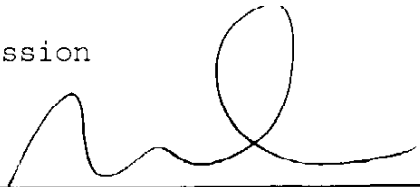
Deborah Copp
35228 State Hwy 1 NW
Warren, MN 56762

Kevin Duffy, Esq.
PO Box 715
Thief River Falls, MN 56701

Michael Farrell, Trustee
PO Box 519
Barnesville, MN 56514

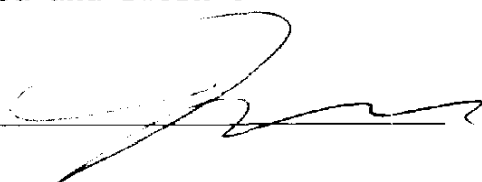
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

NW Regional Development Commission
115 South Main
Warren, MN 56762

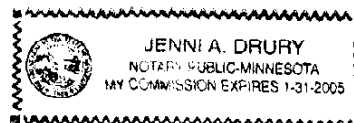


Stephanie Pilegaard

Subscribed and sworn to before me October 15, 2004.



Notary



04-28539

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-60352-DDO

John Copp
Deborah Copp,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 16, 2004.

THIS CAUSE coming to be heard on the Motion of Washington Mutual Bank, FA, successor in interest to HomeSide Lending, Inc., fka BancBoston Mortgage Corporation, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Washington Mutual Bank, FA successor in interest to HomeSide Lending, Inc., fka BancBoston Mortgage Corporation, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

That part of the South Half of the Southeast Quarter (S 1/2 SE 1/4) of Section Thirty-four (34) in Township One Hundred Fifty-five (155) North of Range Forty-eight (48) West, Marshall County, Minnesota described as follows: Commencing at the Southwest Corner of said SE 1/4 of Section 34, Township 155 North, Range 48 West; thence East along the South Line of said SE 1/4 a distance of 1,020 Feet to the point of beginning of the tract to be conveyed herein; thence continuing East along said South Line of said SE 1/4 a distance of 500 feet; thence North Parallel with the West Line of said SE 1/4 a distance of 500 feet; thence West Parallel with the South Line of said SE 1/4 a distance of 500 feet; thence South Parallel with the West Line of said SE 1/4 a distance of 500 Feet, more or less to the Point of beginning.

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court